

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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SPENCER B. DURHAM,

Petitioner,

9:18-cv-0739 (BKS/ATB)

v.

LISA MENARD and NEW YORK STATE  
ATTORNEY GENERAL,

Respondents.

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**Appearances:**

*Petitioner, pro se:*

Spencer B. Durham  
Tallahatchie County Correctional Facility  
415 U.S. Highway 49 North  
Tutwiler, MS 38963

*For Respondent Lisa Menard:*

Thomas J. Donovan, Jr.  
Vermont Attorney General's Office  
Benjamin D. Battles  
Solicitor General  
109 State Street  
Montpelier, VT 05609

*For Respondent New York State Attorney General:*

Letitia James  
Attorney General of the State of New York  
Paul B. Lyons  
Assistant Attorney General, of Counsel  
28 Liberty Street  
New York, NY 10005

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Petitioner Spencer Durham commenced this habeas corpus action under 28 U.S.C. § 2254 on June 25, 2018. (Dkt. No. 1). A response to the petition was filed by respondents on October 25, 2018. (Dkt. Nos. 22 and 24). This matter was assigned to United States Magistrate Judge Andrew T. Baxter who, on October 25, 2019, issued a Report-Recommendation recommending that the petition be denied and dismissed and that a certificate of appealability be denied. (Dkt. No. 31). Magistrate Judge Baxter advised the parties that under 28 U.S.C. § 636(b)(1) and Local Rule 72.1, they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 31, at 26-27). No objections have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 31) is **ADOPTED** in its entirety; and it is further

**ORDERED** that the petition (Dkt. No. 1) is **DENIED AND DISMISSED**; and it is further

**ORDERED** that no certificate of appealability be issued because Petitioner has failed to make “a substantial showing of the denial of a constitutional right” as

required by 28 U.S.C. § 2253(c)(2). Any further request for a certificate of appealability must be addressed to the Court of Appeals (Fed. R. App. P. 22(b)); and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

**Dated: December 9, 2019**

  
Brenda K. Sannes  
Brenda K. Sannes  
U.S. District Judge